

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO

MIGUEL ANGEL RIVERA ROSARIO

Plaintiff

vs.

LSREF2 ISLAND HOLDINGS, LTD.INC.,\*  
HIBISCUSPR 73 LLC; INSURANCE  
COMPANY X and Y

Defendants

CIVIL NO. \_\_\_\_\_

TORTS UNDER ARTICLE 1802  
PUERTO RICO CIVIL CODE  
AND DEMAND FOR JURY TRIAL

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COMPLAINT

TO THE HONORABLE COURT:

COMES NOW plaintiff Miguel Angel Rivera Rosario through the undersigned counsel and very respectfully states, alleges and prays:

DEMAND FOR JURY TRIAL

1. Plaintiff demands a jury trial of all issues so triable.

NATURE OF THE ACTION

2. This is an action whereby compensation is requested for damages suffered as a result of a malicious prosecution claim against defendants based on Puerto Rico's negligence statute, Article 1802 of the Puerto Rico Civil Code,

3. The damages suffered in this case, and the cause of the malicious prosecution claim, arise and are related to the judicial case LSREF2 Island Holdings, Ltd, Inc. v. Miguel Rivera Rosario, Angel Rivera Meléndez and his wife María Asunción Rosario and their conjugal partnership (last two as guarantors), Civil

No. FCC12010-0449 (0004), Court of First Instance, Superior Part of Loiza in Carolina, regarding Collection of Monies, Foreclosure of Pledge and Mortgage, Ordinary Procedure.

#### JURISDICTION

4. The present case is in accordance with 28 U.S. C. Sec. 1332 (a) (2), (c) (1) (diversity jurisdiction). To that effect, defendant LSREF2 Island Holdings, Ltd, Inc. (LSREF2) is incorporated in the foreign state of Bermuda; HIBISCUSPR 73 LLC (Hibiscus) exists under the laws of the State of Delaware, U.S.A., and plaintiff is a citizen of Puerto Rico.

#### PARTIES

5. Plaintiff Miguel Rivera Rosario is of legal age, a businessman, and resident of San Juan, Puerto Rico.

6. Defendant LSREF2 is a company incorporated in Bermuda with authorization to do business in Puerto Rico Rico, with offices in San Juan, Puerto Rico

7. Defendant Hibiscus is a company of limited responsibility existing under the laws of the State of Delaware, U.S.A, with offices in San Juan, Puerto Rico. Hibiscus is not registered with the Puerto Rico State Department.

8. Both defendants LSREF2 and Hibiscus are “professional buyers of litigations”, dedicated to buying accounts, such as mortgage loans from different financial and banking institutions in Puerto Rico, which are considered losses by the

referenced financial and banking institutions, at extremely low prices, below the market prices, to then proceed to collect them.

9. Co-defendant Insurance Company X and Y are insurance companies which at all times relevant to this case were Defendants LSREF2 and Hibiscus' insurers and thus had insurance policies which covered the damages requested in this complaint. At the moment of filing of this complaint the name and address of said companies are unknown to plaintiffs.

### FACTUAL ALLEGATIONS

10. Plaintiff Miguel Rivera is the owner of the property located in the Torrecilla Alta de Loiza neighborhood, in the area known as Piñones, with an area, per the current Registry of Property description, of 1,381 square meters, recorded in Page 67 of Volume 221, Agora of Loiza, property number 10,489, Property Registry, Section III of Carolina.

11. In said property there is a cement structure of two stories, which is completely leased by plaintiff to a Head Start federal program.

12. On July 8, 2010, the First Bank of Puerto Rico (First Bank) filed the case, referred in the previous paragraph 3 of this complaint, of First Bank of Puerto Rico v. Miguel Angel Rivera Rosario, Angel Rivera Meléndez and his wife María Asunción Rosario and their conjugal partnership (last two as guarantors), Civil No. FCC12010-0449 (0004), Court of First Instance, Superior Part of Rio Grande, regarding Collection of Monies Foreclosure of Pledge and Mortgage by Ordinary

Proceeding, concerning plaintiff Miguel Rivera's property referred in the preceding paragraph 10.<sup>1</sup>

13. Through such complaint FirstBank intended to collect various mortgage notes subscribed by plaintiff Miguel Rivera Rosario and guaranteed with a mortgage over said plaintiff's referred property located in the Torrecilla Alta de Loiza

14 On June 24, 2011, the parties back then filed in said judicial case a settlement agreement, titled "Joint Motion Requesting Entry of Judgment", which was approved by the Superior Court and Judgment was entered pursuant to such agreement on August 1, 2011.

15. On said judicial settlement agreement, in consideration of the defendants' (including here plaintiff) acceptance and acknowledgement of owing Firstbank the principal amount of \$2,939,499.12, plus interest and various charges, and consent to the judgment, Firstbank granted the same the period of twelve (12) months to sell the mortgaged property for a sum of no less than 1.5 million dollars, sum that if obtained would be paid to Firstbank for the totality of the debt. During that period defendants (including here plaintiff) had to pay twelve (12) monthly payments to FirstBank for the sum of \$5,300.00 each payment, amount that would be jointly

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<sup>1</sup> This foreclosure took place in the period of the late 2000s that came to be known as the Great Recession, where an economic slump began when the U.S. housing market went from boom to bust, and large amounts of mortgage-backed securities and derivatives lost significant value. (See Investopedia)

applied to the late charges, interest and indebted principal detailed in the referred agreement.

16. As part of said settlement agreement, if defendants (including here plaintiff) complied with the monthly payments referred in the preceding paragraph, but were not able to sell the property during the term stated therein, First Bank would grant them a second term of twelve (12) additional months for defendants to sell the property for the stated sum. During that additional period, defendants would make another twelve (12) monthly payments to FirstBank, in this case each payment for the sum of \$6,300.00, amounts that would also be jointly applied to the late charges, interest and indebted principal.

17. Pursuant to such judicial settlement agreement and the Judgment accordingly entered, on September 19, 2011, and in accordance to item 5(p) of said settlement agreement, plaintiff Miguel Rivera solicited from FirstBank, in a letter, permission to segregate and sell for the price of \$150,000.00, a portion of land of 626.7606 square meters of the mortgaged property. At that portion of land was located the business known as "Blue Iguana", administered by Mr. Nahum Gómez Hidalgo, the person interested in acquiring the property, which sold to the public food typical to the Piñones area.

18. On October 20, 2011, FirstBank, through its legal counsel, notified a communication to here plaintiff's counsel, where Firstbank agreed and authorized the referred sale to Mr. Nahúm Gómez, with the condition that the sales price of \$150,000.00 be paid to Firstbank, Said sum would then be applied exclusively, as a result of the request of here appearing plaintiff Miguel Rivera, to the monthly

payments in favor of Firstbank referred in the preceding paragraphs 15 and 16 of this complaint. Said communication also provided a period of ninety (90) days to fulfill the acts there prescribed,

19. On October 24, 2011, Mr. Gómez and plaintiff Miguel Rivera, subscribed a Purchase Option Agreement, in relation to the referred sale, paying Mr. Gomez the sum of \$7,500.00 for the option, sum that was paid to Firstbank. Mr. Gómez paid the rest of the sales price through monthly payments. The procedure for payment was that Mr. Gomez handed the monthly payments to plaintiff Miguel Rivera, who then, usually through defendant guarantor, Angel Rivera Meléndez, paid the same to Firstbank through a specially designated official of the bank, Mr. George Pappas. Said monthly payments commenced on March 1, 2012 and ended on August, 2013. Firstbank was fully conscious and aware, and totally accepted, that the referred monthly payments came from the payments made by Mr. Gómez as part of the sales price for the Blue Iguana property.

20. Mr. Pappas, on behalf of FirstBank, received the \$7,500.00 paid by Mr. Gómez corresponding to the option to purchase the Blue Iguana property, and subsequently accepted all the remaining monthly payments, made by Mr. Gómez through plaintiff Miguel Rivera Rosario and defendant guarantor Angel Rivera Meléndez, for approximately one year and ten months, until the total amount of the sale was completed and approximately two years after the October 11, 2011 letter of authorization. Firstbank was always aware of the origin of the money, that it came from Mr. Gómez as payment for the referred sale.

21. To this end, Firstbank unequivocally implicitly waived some of the original terms and conditions of the agreement. Firstbank received payments for the entire sale in a time period that far exceeded the referred period of ninety (90) days to fulfill the acts included in the agreement, without raising any objections or claiming compliance with any clause of the agreement. Thus, Firstbank made a modifying novation of the agreement. (See P.D.C.M. Assoc. v. Najul Bez, 174 DPR7 16 (2008))

22. In consequence, the obligations included in the agreement, that is, among others, the grouping of the lot adjoining the property of plaintiff Rivera Rosario, as well as the segregation and release of the property where the Blue Iguana is located, remained to be complied with, but not tied to the referred period of ninety (90) days provided in the authorization letter of October 20, 2011.

23. On February 13, 2012, and as a result of said agreement and authorization by Firstbank, plaintiff Miguel Rivera Rosario- with the referred monthly payments commencing on March 1, 2012- sold to Mr. Nahum Gómez, with Firstbank's knowledge and acceptance, the property where the business Blue Iguana was located,<sup>2</sup> and referred in the preceding paragraph 17, paying to FirstBank, in monthly payments, the total sum of \$150,000.00, product of such sale, applying such payments to the monthly payments referred in preceding paragraphs 15 and 16 of this complaint.

24. When Firstbank received the totality of \$150,000.00, paid by Mr. Nahúm Gomez Hidalgo, through the referred monthly payments, as the sales price for the

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<sup>2</sup> Said sale was made through a notarized agreement, pending completion of segregation proceedings to then proceed with the purchase deed.

property where the business Blue Iguana was located, Firstbank was obligated to release said portion of land sold to Mr. Gómez Hidalgo and occupied by the business called Blue Iguana within the mortgaged property. (See Puerto Rico Civil Code, Article 1044, 31 L.P.R.A. sec. 2994)

25. On March 28, 2013- while the referred monthly payments of the sales price for the property where the business Blue Iguana was located were still being made in favor of Firstbank- here defendant LSREF2, in its role as “professional buyer of litigations”, acquired from FirstBank the credits and mortgage guarantees included in the foreclosure case, referred in the preceding paragraph 12, at extremely low prices, below the market prices, and considered as losses by such bank, to then proceed with their collection. To that effect, defendant LSREF2 formally substituted FirstBank as plaintiff in said case of foreclosure.

26. The here defendant LSREF2 upon acquiring from FirstBank the credits and mortgage guarantees and substituting FirstBank in the referred judicial case of foreclosure, acquired full knowledge that plaintiff Miguel Rivera Rosario, with FirstBank's approval, had sold to Mr. Nahum Gomez Hidalgo the piece of land referred in the preceding paragraph 17, for the sum of \$150,000.00, that the sales price of \$150,000.00 had been paid to Firstbank through the referred monthly payments, which ended on August, 2013, and that Firstbank had waived the compliance of the period of ninety (90) days provided in the authorization letter to fulfill the acts there prescribed, modifying the agreement and authorization letter. Plaintiff Miguel Rivera Rosario also informed defendant LSREF2 of said sale and



provided said defendant with copy of the agreements and cancelled checks related to the sale.

27. When FirstBank sold to LSREF2 the mortgage over the property of Miguel Rivera Rosario pursuant to item 5(z) of the settlement agreement and judgment, LSREF2 became obliged to comply with FirstBank's obligation to allow the segregation of the property that Blue Iguana occupied and allow the release of such land from the existent mortgage between here plaintiff Miguel Rivera and FirstBank (now LSREF2). (See IBEC v. Banco Comercial, 117 D.P.R. 371 (1986))

28. However, on December 19, 2013, defendant LSREF2 proceeded to file in the foreclosure case, and in which the same substituted Firstbank as plaintiff, a "Petition for Execution of Judgment", soliciting the sale in public auction of plaintiff Miguel Rivera's mortgaged property, but, with malice and without probable cause- as part of a plan with the purpose of obtaining the most profit possible and in the most rapid manner, not having to spend time with segregation proceedings- proceeded to improperly include in the execution the piece of land that plaintiff Miguel Rivera sold to Mr. Nahum Gomez Hidalgo. (Said petition for execution of judgment at that moment did not proceed.)

29. Then, defendant LSREF2 on March 5, 2015, proceeded to file in the referred foreclosure case a "Petition for New Order and Writ of Execution of Judgment", soliciting again the sale in public auction of plaintiff's mortgaged property- auction that was indeed scheduled- where, maliciously and without probable cause, included again the piece of land that plaintiff sold to Mr. Nahum

Gomez Hidalgo, being disregarded again the sale made to the same of said piece of land.

30 On September 10, 2015 plaintiff Miguel Rivera filed a Bankruptcy Petition at the Federal Bankruptcy Court, wherein the only creditor was defendant LSREF2. On January 14, 2016 Plaintiff Miguel Rivera Rosario voluntarily dismissed said bankruptcy case.

31. Subsequently, on February 9, 2016 defendant LSREF2, proceeded to file in the referred foreclosure case a “Petition for Reopening of Proceedings and For New Order and Writ of Execution of Judgment”, soliciting again the sale in public auction of plaintiff’s mortgaged property, where, maliciously and without probable cause, again included the piece of land that plaintiff sold to Mr. Nahum Gomez Hidalgo.

32. On February 16, 2016 here plaintiff Miguel Rivera filed a motion in the referred foreclosure case opposing the execution of judgment solicited by defendant LSREF2, requesting that Mr. Nahum Gómez be included in the foreclosure proceedings, alleging that Mr. Gómez was the owner of a piece of land in the property that here defendant LSREF2 was trying to execute and sell in public auction.

33. LSREF2’s plan, that improperly included in the execution of judgment the piece of land sold to Mr. Nahum Gómez- for the purpose of obtaining the most profit possible and in the most rapid manner- also included, maliciously and without probable cause, LSREF2 opposing Mr. Gomez’s petitions for intervention in the

foreclosure case and, to, thus, facilitate the inclusion of the land sold to Mr. Gómez .in the execution of judgment.

34. To that effect, on March 1, 2016 defendant LSREF2, maliciously and without probable cause, filed a Reply in opposition to plaintiff Miguel Rivera's referred motion requesting that Mr. Nahum Gómez be included in the foreclosure case.

35. On August 22, 2016 Mr. Nahum Gomez filed a motion in the foreclosure case soliciting permission to intervene in the case, alleging that the same was the owner of a piece of land in the property that defendant was trying to execute and sell in public auction.

36. Defendant LSREF2 on September 6, 2016, maliciously and without probable cause, opposed said motion filed by Mr. Nahum Gómez to intervene in the foreclosure case.

37. At a hearing held on September 8, 2016 at the Puerto Rico Superior Court on the foreclosure case, defendant LSREF2, maliciously and without probable cause, continued to oppose Plaintiff Miquel Rivera Rosario and Mr. Nahum Gomez's petitions to be included in the foreclosure case.

38. At the evidentiary hearings held on November 15, 2016 and December 22, 2016 at the Puerto Rico Superior Court in relation to Plaintiff Miquel Rivera Rosario and Mr. Nahum Gomez's petitions to be included in the foreclosure case, defendant LSREF2, maliciously and without probable cause. continued to oppose said petitions.

39. Said defendant LSREF2 perfectly knew from Mr. Gomez and plaintiff's motions that Mr. Gomez's interest in participating in the foreclosure case, irrespectively if it was through the proceeding of "indispensable party" or "intervention", was to assert his right on part of the property under execution and the grounds supporting its contention, namely, the sale in his favor of that piece of land, thus seeking recognition of his right over the referred piece of land sold to him.

40. Considering that Firstbank had waived the compliance of the referred period of ninety (90) days provided in the authorization letter to fulfill the acts there prescribed, being LSREF2 fully aware of said waiver, the validity of the sale in favor of Mr. Gómez of the Blue Iguana property subsisted, and, therefore, LSREF2 was not in a position to refuse Mr. Gómez's rights over the Blue Iguana property, and could not oppose said petitions for intervention, irrespectively if they were through the proceedings of "indispensable party" or "intervention", in this way also preserving Mr. Gomez's "right to be heard" as part of his right to due process of law.

41. To that effect, on February 6, 2017 the Puerto Rico Superior Court that was handling the foreclosure case, LSREF2 v. Miguel Rivera Rosario, et. als., Civil No. FCC12010-0449, entered a Resolution, in favor of Mr. Gomez and plaintiff Miguel Rivera, indicating, in synthesis, among other things, the following:

- a) That Mr. Nahúm Gómez had the right to intervene in the foreclosure case;
- b) That Mr. Nahúm Gómez had the right to claim from defendant LSRF2 Island Holdings the liberation of the property called Blue Iguana and the segregation of the related land;
- c) That defendant LSRF2 Island Holdings never had reason nor foundation to oppose said petition and acted with total temerity when obliging

the parties and the court to have to invest money, time and resources to establish said facts;

d) That in consequence, defendant LSRF2 Island Holdings is ordered to liberate from plaintiff Miguel Rivera's mortgage the property called Blue Iguana and that the same permit the segregation of the corresponding land;

e) That for his temerity in the foreclosure case it is imposed upon defendant LSRF2 Island Holdings the sum of \$5,000.00 as attorneys fees and expenses caused to Mr. Nahum Gomez Hidalgo.

42. The defendant LSREF2 appealed said Resolution to the Puerto Rico Appeals Court, which on February 28, 2018 entered judgment and revoked the same.

43. . However, Mr. Nahum Gomez and plaintiff Miguel Rivera filed a petition for certiorari in relation to the the Appeals Court decision, in different cases that were consolidated, to the Puerto Rico Supreme Court, which on May 25, 2018 issued the certiorari and on December 4, 2019 entered Judgment, which is firm and final, in the cases of LSREF2 v. Miguel Rivera Rosario, et. als, v. Nahum Gómez Hidalgo, CC2018-353 consolidated with CC2018-374, indicating, among other things, resolving the case in favor of Mr. Gómez and Plaintiff Miguel Rivera, the following:

a) Mr. Gómez Hidalgo has the right to intervene in the foreclosure process here in dispute;

b)LSREF occupies the same position as Firstbank in relation to mortgage debtors. So LSREF2 is placed in the same Position as FirstBank, with the same rights, but also with the same duties and obligations;

c)The segregation and release of the property where the Blue Iguana is located, in accordance with the applicable permission requirements, subsists; LSREF2 can not deny Mr. Gomez Hidalgo's right over the Blue Iguana;

(d) On the basis of the foregoing, it is agreed with the primary forum that LSREF2 did not have a valid basis for opposing Mr. Gomez Hidalgo's request for intervention and that his conduct was reckless in forcing Gomez to invest time,

money and resources to assert his right.

(The preceding subject-matters<sup>3</sup>, sub-paragraphs (a) to (d), included, are *res judicata*, or, at its very least, a collateral estoppel for reason of judgment. (Presidential Financial Corp. of Florida v. Transcribe Freight Corp. 2012 TSPR 122)

e) The Supreme Court therefore confirms the \$5,000.00 concession granted by the Court of First Instance to Mr. Gomez Hidalgo as fees and expenses in the case.

(f) The Judgment issued by the Court of Appeals on 28 September 2019 is revoked on the grounds set out above and the case is returned to the Court of First instance for continuation of proceedings as resolved here.

44.. This determination of the Puerto Rico Supreme Court- of lack of valid basis by LSREF2 to oppose Mr. Gómez's request for intervention and in forcing Gómez to invest time, money and resources to assert his right- also applies to plaintiff Miguel Rivera. (In this respect the Resolution of the Superior Court mentions "obliging the "parties" and the court to have to invest money, time and resources to establish said facts.)

45. This determination of the Puerto Rico Supreme Court, referred in the preceding paragraph-, which is *res judicata*, or, at its very least, a collateral estoppel for reason of judgment- sustains and proves, as a matter of evidence, that LSREF2's conduct- including in the motions for execution of judgment the piece of land that plaintiff Miguel Rivera sold to Mr. Nahum Gomez Hidalgo, and the opposition to Mr. Gomez's intervention in the foreclosure- were malicious and without probable cause, forcing plaintiff Miguel Rivera, to also invest considerable

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<sup>3</sup> Other subject-matters included in said Judgment and in the present complaint, including paragraphs 19-22 of this complaint, related and/or applicable to the present malicious prosecution claim- are *res judicata*, or, at its very least, a collateral estoppel for reason of judgment.

time, money and resources to assert the validity of the purchase agreement here in controversy.

46. On March 6, 2020, and notified on March 19, 2020, the Supreme Court entered a Resolution denying LSREF2's second motion for reconsideration in relation to the Judgment referred in the preceding paragraph 43, and on March 11, 2020 the corresponding Mandate was issued and sent by the Puerto Rico Supreme Court to the corresponding Superior Court.

47. "A malicious prosecution claim under Puerto Rico law has four elements: (1) the defendant instituted a criminal [or civil] action against the plaintiff; (2) the action was terminated in favor of the plaintiff; (3) the defendant acted with malice and without probable cause; and (4) the plaintiff suffered damages." Gonzalez-Rucci v. U.S. I.N.S., 539 F.3d 66, 69 (1st Cir. 2008) (citation omitted). See also MVM Inc. v. Rodriguez, 568 F.Supp.2d 158, 179 (D.P.R. July 28, 2008) Civil No. 17-1918 (ADC) These four elements for a malicious prosecution claim exist in the present case case.

48. The Puerto Rico Civil Code provides that he who by action or omission causes injury to another person, intervening fault or negligence, is obliged to repair the injury caused. (Article 1802 Civil Code, 31 L.P.R.A. sec 5141)

49. Defendant LSREF2, as described in this complaint, acted with malice and without probable cause, causing Plaintiff Miguel Rivera, as owner and then seller of the property in controversy, damages and severe suffering and mental anguish, when said defendant included in the execution of judgment the piece of

land that plaintiff sold to Mr. Nahum Gomez, being disregarded the sale made to the same of said piece of land.

50. Also, Defendant LSREF2, as described in this complaint, acted with malice and without probable cause, causing Plaintiff Miguel Rivera, as owner and then seller of the property in controversy, additional damages and severe suffering and mental anguish, when said defendant opposed Mr. Gomez's request for intervention without a having valid basis for said opposition, forcing the parties to invest time money and resources to assert Mr. Gomez's right.

51 . To that effect, LSREF2, according to Article 1802 of the Puerto Rico Civil Code, is responsible for the damages suffered by plaintiff Miguel Rivera, as a direct result of said defendant's malicious and without probable cause actions against the same.

52. Plaintiff Miguel Rivera was also constantly preoccupied and fearful of losing his only income and his property as he could not obtain a refinancing to pay off the mortgage debt since while the controversy related to the referenced sale in favor of Mr. Nahum Gómez and the corresponding segregation existed, the banks refused to give any refinancing.

53. In addition Plaintiff Miguel Rivera, as a result of the motion for execution of judgment filed on March 5, 2012 by defendant LSREF2, which included in the same the piece of land that plaintiff sold to Mr. Nahum Gomez, was forced to file a bankruptcy proceeding, aggravating Mr. Rivera's mental anguish, diminishing even more his opportunities to obtain a refinancing to pay the mortgage debt.



54. Also, here appearing plaintiff feared that while there was a controversy regarding the referenced sale and segregation, they would be subject to a claim on the part of the third party, Mr. Nahum Gomez, to whom Plaintiff Miguel Rivera sold the piece of land in controversy.

55. Plaintiff Miguel Rivera has suffered emotional damages, grave depression and mistrust, stress, anxiety, inconveniences, damages to his reputation, humiliation and has suffered lack of sleep all due to the aforementioned malicious, without probable cause, actions of defendant. LSREF2.

56. As a direct and immediate result of the malicious, without probable cause actions of defendant. here referred to, the interest of plaintiff Miguel Rivera in his work and prosperity has been affected, preventing him to be economically rehabilitated. Defendant's actions have affected the search for happiness of plaintiff.

57. Defendants knew or reasonably should have known or foreseen that its malicious and without probable cause actions would cause damages to plaintiff which are figured in the sum of \$5,500,000.00 for Miguel Rivera Rosario,

58. While the appeal to the Puerto Rico Supreme Court, referred in paragraph 43 of this complaint, was pending, on October 23, 2018 LSREF2 transferred to Hibiscus, according to information provided by the same, the credits and mortgage guarantees here in controversy, object of the case here referred to LSREF2 v. Miguel Rivera Rosario, et. als., Civil No. FCC12010-0449. .

59. On July 14, 2020, approximately one year and nine months later, Hibiscus<sup>4</sup> filed in the foreclosure case referred in the preceding paragraph a “Motion Soliciting Substitution of Party”, announcing for the first time that the same had acquired all of LSREF2's interest in the credit facility at issue in this case, which plaintiff did not know, and that Hibiscus, in its own words, “subrogated” itself in all LSREF2's rights in relation to the defendants.

60. However, in doing so, Hibiscus also subrogated itself in relation to the claims plaintiff Miguel Rivera had against LSREF2.

61. A third party that is subrogated to the creditor's rights does not cause the extinction of the original compulsory relationship, but replaces one creditor with another. The main effect of a subrogation is that the new creditor is placed in the “same juridical situation” as the creditor with respect to the debtor. (The Supreme Court's emphasis) (Cooperativa de Seguros Múltiples de Puerto Rico v. Jorge Carlo Marrer<sup>6</sup>, 2011 TSPR 99)

62. In this respect it should be considered that when on October 23, 2018 Hibiscus acquired all of LSREF2's interest in the credit facility at issue in this case, LSREF2's juridical situation already included against the same, and in favor of Mr. Gómez and plaintiff Miguel Rivera, the Puerto Rico Superior Court's Resolution of February 6, 2017 entered in the foreclosure case and referred in paragraph 41 of this complaint.

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<sup>4</sup> Represented by the same law firm and attorney which represented LSREF2 in the foreclosure proceedings object of the present case and the referred appeals.

63. Said juridical situation also included the already existing and ongoing proceedings in the Puerto Rico Supreme Court, where the validity of said Resolution was being considered, and where finally Judgment was entered against LSREF2, and in favor of Mr. Gómez and plaintiff Miguel Rivera, risk that Hibiscus assumed.

64. In addition, it should be also be considered that in the transfer of credit, debtor conserves against the new creditor the pleas and defenses the same had against the prior creditor. (Cooperativa de Seguros Múltiples de Puerto Rico v. Jorge Carlo Marrero, supra)

65. As a result, Hibiscus is solidarily also responsible for LSREF2's malicious and without probable cause actions here depicted and for the damages suffered by plaintiff as a result of said actions, which are figured in the total sum of \$5,500,000.00, and for any other claim included in the present complaint.

66. Plaintiffs' address is the following: Las Flores Street #358, San Juan, P.R.00912

WHEREFORE, plaintiff very respectfully requests from this Honorable Court the following:

a) That the same determine that both LSREF2 and Hibiscus are responsible, in a solidary manner, for the damages suffered by plaintiff in the present case as a result of LSREF2's malicious prosecution;

b) That the same grant this complaint and order defendants to pay plaintiff, solidarily, for the damages suffered, the amount of Five Million Five Hundred Thousand Dollars (\$5,500,000.00), plus costs, expenses and attorney's fees.

b) That the same impose punitive damages against defendants for an amount not less than One Million Dollars (\$1,000,000.00)

c) Grant any other relief which this Honorable Court deems just and proper.

At San Juan, Puerto Rico this November 13, 2020.

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